



Pension Benefit Guaranty Corporation
1200 K Street, N.W., Washington, D.C. 20005-4026

**BY EMAIL: 71788-67910836@requests.muckrock.com and
BY FEDERAL EXPRESS**

PBGC 2019-000786

September 11, 2019

Mr. Russ Kick
MuckRock News
Dept. MR 71788
411A Highland Avenue
Somerville, MA 02144

Re: Request for FY 2018 Log of Freedom of Information Act (FOIA) Requests

Dear Mr. Kick:

On behalf of the Disclosure Officer, I am responding to your FOIA request, submitted to the Pension Benefit Guaranty Corporation (PBGC) via FOIAonline on April 16, 2019. You requested a copy the PBGC's FOIA log for Fiscal Year (FY) 2018, including a field showing the subject of each request and a field for the final disposition. You also requested this document in digital format, such as PDF or Excel. We processed your request in accordance with the FOIA and PBGC's implementing regulation. I apologize for the delay.

Pursuant to your request, the Disclosure Division conducted a search of our electronic processing system and located the enclosed FOIA log for FY 2018 (125 pages) responsive to your request. The Disclosure Officer has determined this document may be partially released to you.¹

It was necessary to withhold personal privacy information belonging to PBGC's Privacy Act requesters. As you may know, the PBGC receives many first-party Privacy Act requests. Although agencies are encouraged to also process Privacy Act requests in accordance with the FOIA, unlike FOIA Requestors, Privacy Act Requestors have an expectation of and a right to privacy. To ensure compliance with the Privacy Act, the PBGC's implementing regulations, and the Office of Management and Budget's (OMB) guidelines to protect and safeguard personally identifiable information (PII) as defined by OMB Memorandum M-07-16, I have redacted the names of all Privacy Act Requesters whose requests were also processed in accordance with the FOIA and subsequently appealed.

The Privacy Act provides for three avenues for disclosure. The first, is with consent from the subject of the record. The second alternative method to release these names, is to do so pursuant to an order of a Court of competent jurisdiction. See, 5 U.S.C. § 552a(11). Upon receipt of such an order, we will release the names of the Privacy Act Requesters. Please note that an

¹ Per your request, the log is being provided in PDF format.

administrative Subpoena does not satisfy the provisions of the Statute; we would need a court order signed by a Judge. The third option is disclosure through an applicable routine use under the Privacy Act. After carefully reviewing the FOIAonline Systems of Records Notice (SORN), I note there is no Routine Use that would allow the disclosure of the names of Privacy Act Requesters. As such and in accordance with the applicable laws, the Disclosure Officer has determined that the names of first-party requesters should be withheld from disclosure.

The PBGC reasonably foresees that disclosure of names and other personal privacy information of Privacy Act requesters would harm an interest protected by a FOIA Exemption. The Disclosure Officer relied on one FOIA exemption to withhold this information.

The applicable exemption, 5 U.S.C. § 552(b)(6), exempts from required public disclosure, “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Some of the records you have requested contain “similar files” within the meaning of the above cited statutory language and the PBGC implementing regulation (29 C.F.R. § 4901.21(b)(4)). The FOIA requires agencies to conduct a balancing test. In applying Exemption 6, a balancing test was conducted, weighing the privacy interests of the individuals named in a document against the public interest in disclosure of the information. The public interest in disclosure is one that will “shed light on an agency’s performance of its statutory duties.” *Dep’t of Justice v. Reporters Committee*, 489 U.S. 749, 773 (1989). The Disclosure Officer has determined disclosure of this information would constitute a clearly unwarranted invasion of an individual’s personal privacy.

As this response constitutes a partial denial of your records request, I am providing you with your FOIA appeal rights should you wish to avail yourself of this process. The FOIA provides at 5 U.S.C. § 552(a)(6)(A)(i) (2014) amended by FOIA Improvement Act of 2016, Pub. L. No. 114-185, 130 Stat. 538 that if a disclosure request is denied in whole or in part by the Disclosure Officer, the requester may file a written appeal within 90 days from the date of the denial or, if later (in the case of a partial denial), 90 days from the date the requester receives the disclosed material. The PBGC's FOIA regulation provides at 29 C.F.R. § 4901.15 (2017) that the appeal shall state the grounds for appeal and any supporting statements or arguments, and shall be addressed to the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, N.W., Washington, D.C. 20005. To expedite processing, the words “FOIA Appeal” should appear on the letter and prominently on the envelope.

In the alternative, you may contact the Disclosure Division’s Public Liaison at 202-326-4040 for further assistance and to discuss any aspect of your request. You also have the option to contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

This completes our processing of your request. Since your request is below the nominal threshold of \$25.00, we have not assessed any fees for its processing.² You may submit future requests for PBGC records by accessing FOIAonline, our electronic FOIA processing system, at <https://foiaonline.gov>, or by email to Disclosure@pbgc.gov.

Sincerely,

A handwritten signature in blue ink that reads "ME Gamez".

Maria E. Gamez
Deputy Disclosure Officer

Enclosure

² The FOIA Improvement Act of 2016 precludes an agency from charging search fees to a FOIA requester if the agency does not meet the FOIA's twenty-day time limit. As such, we did not assess search fees for this request.